

WORKER'S DISABILITY COMPENSATION ACT OF 1969 (EXCERPT)

Act 317 of 1969

CHAPTER 3

COMPENSATION

418.301 Compensation for personal injury or death resulting from personal injury arising out of and in the course of employment; time or date of injury; compensation for mental disabilities and conditions of aging process; presumption; injury incurred in pursuit of social or recreational activity; "disability" defined; determining entitlement to weekly wage loss benefits; notice to Michigan employment security commission; priorities in finding employment; notice of employee refusing offer of employment; termination of benefits; "reasonable employment" defined; payment of benefits to persons incarcerated in penal institution or confined in mental institution; discrimination prohibited; personal injuries and work related diseases to which section applicable.

Sec. 301. (1) An employee, who receives a personal injury arising out of and in the course of employment by an employer who is subject to this act at the time of the injury, shall be paid compensation as provided in this act. In the case of death resulting from the personal injury to the employee, compensation shall be paid to the employee's dependents as provided in this act. Time of injury or date of injury as used in this act in the case of a disease or in the case of an injury not attributable to a single event shall be the last day of work in the employment in which the employee was last subjected to the conditions that resulted in the employee's disability or death.

(2) Mental disabilities and conditions of the aging process, including but not limited to heart and cardiovascular conditions, shall be compensable if contributed to or aggravated or accelerated by the employment in a significant manner. Mental disabilities shall be compensable when arising out of actual events of employment, not unfounded perceptions thereof.

(3) An employee going to or from his or her work, while on the premises where the employee's work is to be performed, and within a reasonable time before and after his or her working hours, is presumed to be in the course of his or her employment. Notwithstanding this presumption, an injury incurred in the pursuit of an activity the major purpose of which is social or recreational is not covered under this act. Any cause of action brought for such an injury is not subject to section 131.

(4) As used in this chapter, "disability" means a limitation of an employee's wage earning capacity in work suitable to his or her qualifications and training resulting from a personal injury or work related disease. The establishment of disability does not create a presumption of wage loss.

(5) If disability is established pursuant to subsection (4), entitlement to weekly wage loss benefits shall be determined pursuant to this section and as follows:

(a) If an employee receives a bona fide offer of reasonable employment from the previous employer, another employer, or through the Michigan employment security commission and the employee refuses that employment without good and reasonable cause, the employee shall be considered to have voluntarily removed himself or herself from the work force and is no longer entitled to any wage loss benefits under this act during the period of such refusal.

(b) If an employee is employed and the average weekly wage of the employee is less than that which the employee received before the date of injury, the employee shall receive weekly benefits under this act equal to 80% of the difference between the injured employee's after-tax weekly wage before the date of injury and the after-tax weekly wage which the injured employee is able to earn after the date of injury, but not more than the maximum weekly rate of compensation, as determined under section 355.

(c) If an employee is employed and the average weekly wage of the employee is equal to or more than the average weekly wage the employee received before the date of injury, the employee is not entitled to any wage loss benefits under this act for the duration of such employment.

(d) If the employee, after having been employed pursuant to this subsection for 100 weeks or more loses his or her job through no fault of the employee, the employee shall receive compensation under this act pursuant to the following:

(i) If after exhaustion of unemployment benefit eligibility of an employee, a worker's compensation magistrate or hearing referee, as applicable, determines for any employee covered under this subdivision, that the employments since the time of injury have not established a new wage earning capacity, the employee shall receive compensation based upon his or her wage at the original date of injury. There is a presumption of wage earning capacity established for employments totalling 250 weeks or more.

(ii) The employee must still be disabled as determined pursuant to subsection (4). If the employee is still disabled, he or she shall be entitled to wage loss benefits based on the difference between the normal and customary wages paid to those persons performing the same or similar employment, as determined at the time of termination of the employment of the employee, and the wages paid at the time of the injury.

(iii) If the employee becomes reemployed and the employee is still disabled, he or she shall then receive wage loss benefits as provided in subdivision (b).

(e) If the employee, after having been employed pursuant to this subsection for less than 100 weeks loses his or her job for whatever reason, the employee shall receive compensation based upon his or her wage at the original date of injury.

(6) A carrier shall notify the Michigan employment security commission of the name of any injured employee who is unemployed and to which the carrier is paying benefits under this act.

(7) The Michigan employment security commission shall give priority to finding employment for those persons whose names are supplied to the commission under subsection (6).

(8) The Michigan employment security commission shall notify the bureau in writing of the name of any employee who refuses any bona fide offer of reasonable employment. Upon notification to the bureau, the bureau shall notify the carrier who shall terminate the benefits of the employee pursuant to subsection (5)(a).

(9) "Reasonable employment", as used in this section, means work that is within the employee's capacity to perform that poses no clear and proximate threat to that employee's health and safety, and that is within a reasonable distance from that employee's residence. The employee's capacity to perform shall not be limited to jobs in work suitable to his or her qualifications and training.

(10) Weekly benefits shall not be payable during the period of confinement to a person who is incarcerated in a penal institution for violation of the criminal laws of this state or who is confined in a mental institution pending trial for a violation of the criminal laws of this state, if the violation or reason for the confinement occurred while at work and is directly related to the claim.

(11) A person shall not discharge an employee or in any manner discriminate against an employee because the employee filed a complaint or instituted or caused to be instituted a proceeding under this act or because of the exercise by the employee on behalf of himself or herself or others of a right afforded by this act.

(12) This section shall apply to personal injuries and work related diseases occurring on or after June 30, 1985.

History: Add. 1985, Act 103, Imd. Eff. July 30, 1985;—Am. 1986, Act 313, Imd. Eff. Dec. 23, 1986;—Am. 1987, Act 28, Imd. Eff. May 14, 1987.

Compiler's note: For legislative intent as to severability, see Compiler's note to MCL 418.213.

Former MCL 418.301, which pertained to compensation for personal injury or death resulting from personal injury, was repealed by Act 103 of 1985, Imd. Eff. July 30, 1985.

Popular name: Act 317

Popular name: Heart and Lung Act

418.305 Wilful misconduct of employee.

Sec. 305. If the employee is injured by reason of his intentional and wilful misconduct, he shall not receive compensation under the provisions of this act.

History: 1969, Act 317, Eff. Dec. 31, 1969.

Popular name: Act 317

Popular name: Heart and Lung Act

418.311 Compensation payments; computations.

Sec. 311. No compensation shall be paid under this act for any injury which does not incapacitate the employee from earning full wages, for a period of at least 1 week, but if incapacity extends beyond the period of 1 week, compensation shall begin on the eighth day after the injury. If incapacity continues for 2 weeks or longer or if death results from the injury, compensation shall be computed from the date of the injury.

History: 1969, Act 317, Eff. Dec. 31, 1969.

Popular name: Act 317

Popular name: Heart and Lung Act

418.313 "After-tax average weekly wage" defined; tables.

Sec. 313. (1) As used in this act, "after-tax average weekly wage" means average weekly wage as defined in section 371 reduced by the prorated weekly amount which would have been paid under the federal insurance contributions act, 26 U.S.C. 3101 to 3126, state income tax and federal income tax, calculated on an annual basis using as the number of exemptions the disabled employee's dependents plus the employee, and

without excess itemized deductions. Effective January 1, 1982, and each January 1 thereafter, the applicable federal and state laws in effect on the preceding July 1 shall be used in determining the after-tax weekly wage.

(2) Each December 1 the director shall publish tables of the average weekly wage and 80% of after-tax average weekly wage that are to be in effect on the following January 1. These tables shall be conclusive for the purpose of converting an average weekly wage into 80% of after-tax average weekly wage.

History: Add. 1980, Act 357, Eff. Jan. 1, 1982;—Am. 1982, Act 32, Imd. Eff. Mar. 10, 1982.

Popular name: Act 317

Popular name: Heart and Lung Act

418.315 Furnishing medical care for injury arising out of and in course of employment; optometric service; attendant or nursing care; selection of physician by employee; objection; order; other services and appliances; proration of attorney fees; fees and other charges subject to rules; advisory committee; excessive fees or unjustified treatment, hospitalization, or visits; review of records and medical bills; utilization review; effect of accepting payment; submitting false or misleading information as misdemeanor; penalty; improper overutilization or inappropriate health care or health services; appeal; criteria or standards; certification; unusual health care or service.

Sec. 315. (1) The employer shall furnish, or cause to be furnished, to an employee who receives a personal injury arising out of and in the course of employment, reasonable medical, surgical, and hospital services and medicines, or other attendance or treatment recognized by the laws of this state as legal, when they are needed. However, an employer is not required to reimburse or cause to be reimbursed charges for an optometric service unless that service was included in the definition of practice of optometry under section 17401 of the public health code, 1978 PA 368, MCL 333.17401, as of May 20, 1992. An employer is not required to reimburse or cause to be reimbursed charges for services performed by a profession that was not licensed or registered by the laws of this state on or before January 1, 1998, but that becomes licensed, registered, or otherwise recognized by the laws of this state after January 1, 1998. Attendant or nursing care shall not be ordered in excess of 56 hours per week if the care is to be provided by the employee's spouse, brother, sister, child, parent, or any combination of these persons. After 10 days from the inception of medical care as provided in this section, the employee may treat with a physician of his or her own choice by giving to the employer the name of the physician and his or her intention to treat with the physician. The employer or the employer's carrier may file a petition objecting to the named physician selected by the employee and setting forth reasons for the objection. If the employer or carrier can show cause why the employee should not continue treatment with the named physician of the employee's choice, after notice to all parties and a prompt hearing by a worker's compensation magistrate, the worker's compensation magistrate may order that the employee discontinue treatment with the named physician or pay for the treatment received from the physician from the date the order is mailed. The employer shall also supply to the injured employee dental service, crutches, artificial limbs, eyes, teeth, eyeglasses, hearing apparatus, and other appliances necessary to cure, so far as reasonably possible, and relieve from the effects of the injury. If the employer fails, neglects, or refuses so to do, the employee shall be reimbursed for the reasonable expense paid by the employee, or payment may be made in behalf of the employee to persons to whom the unpaid expenses may be owing, by order of the worker's compensation magistrate. The worker's compensation magistrate may prorate attorney fees at the contingent fee rate paid by the employee.

(2) Except as otherwise provided in subsection (1), all fees and other charges for any treatment or attendance, service, devices, apparatus, or medicine under subsection (1), are subject to rules promulgated by the bureau of worker's compensation pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. The rules promulgated shall establish schedules of maximum charges for the treatment or attendance, service, devices, apparatus, or medicine, which schedule shall be annually revised. A health facility or health care provider shall be paid either its usual and customary charge for the treatment or attendance, service, devices, apparatus, or medicine, or the maximum charge established under the rules, whichever is less.

(3) The director of the bureau shall provide for an advisory committee to aid and assist in establishing the schedules of maximum charges under subsection (2) for charges or fees that are payable under this section. The advisory committee shall be appointed by and serve at the pleasure of the director.

(4) If a carrier determines that a health facility or health care provider has made any excessive charges or required unjustified treatment, hospitalization, or visits, the health facility or health care provider shall not receive payment under this chapter from the carrier for the excessive fees or unjustified treatment, hospitalization, or visits, and is liable to return to the carrier the fees or charges already collected. The bureau

may review the records and medical bills of a health facility or health care provider determined by a carrier to not be in compliance with the schedule of charges or to be requiring unjustified treatment, hospitalization, or office visits.

(5) As used in this section, "utilization review" means the initial evaluation by a carrier of the appropriateness in terms of both the level and the quality of health care and health services provided an injured employee, based on medically accepted standards. A utilization review shall be accomplished by a carrier pursuant to a system established by the bureau that identifies the utilization of health care and health services above the usual range of utilization for the health care and health services based on medically accepted standards and provides for acquiring necessary records, medical bills, and other information concerning the health care or health services.

(6) By accepting payment under this chapter, a health facility or health care provider shall be considered to have consented to submitting necessary records and other information concerning health care or health services provided for utilization review pursuant to this section. The health facilities and health care providers shall be considered to have agreed to comply with any decision of the bureau pursuant to subsection (7). A health facility or health care provider that submits false or misleading records or other information to a carrier or the bureau is guilty of a misdemeanor, punishable by a fine of not more than \$1,000.00, or by imprisonment for not more than 1 year, or both.

(7) If it is determined by a carrier that a health facility or health care provider improperly overutilized or otherwise rendered or ordered inappropriate health care or health services, or that the cost of the health care or health services was inappropriate, the health facility or health care provider may appeal to the bureau regarding that determination pursuant to procedures provided for under the system of utilization review.

(8) The criteria or standards established for the utilization review shall be established by rules promulgated by the bureau. A carrier that complies with the criteria or standards as determined by the bureau shall be certified by the department.

(9) If a health facility or health care provider provides health care or a health service that is not usually associated with, is longer in duration in time than, is more frequent than, or extends over a greater number of days than that health care or service usually does with the diagnosis or condition for which the patient is being treated, the health facility or health care provider may be required by the carrier to explain the necessity or indication for the reasons why in writing.

History: 1969, Act 317, Eff. Dec. 31, 1969;—Am. 1975, Act 93, Imd. Eff. May 27, 1975;—Am. 1981, Act 195, Eff. Mar. 31, 1982;—Am. 1985, Act 103, Imd. Eff. July 30, 1985;—Am. 1994, Act 271, Imd. Eff. July 11, 1994;—Am. 1995, Act 21, Imd. Eff. Apr. 12, 1995;—Am. 1998, Act 447, Imd. Eff. Dec. 30, 1998.

Compiler's note: For legislative intent as to severability, see Compiler's note to MCL 418.213.

For transfer of health care-related cost containment functions from the Bureau of Worker's Disability Compensation, Department of Labor, to the Office of Health and Medical Affairs, Department of Management and Budget, see E.R.O. No. 1982-2, compiled at MCL 18.24 of the Michigan Compiled Laws.

For transfer of duty to conduct hearings pursuant to MCL 418.315(7) to the Bureau of Workers' Disability Compensation, Department of Labor, see E.R.O. No. 1986-3, compiled at MCL 418.1 of the Michigan Compiled Laws.

For transfer of workers' compensation administrative rules functions to the Bureau of Workers' Disability Compensation, Department of Labor, see E.R.O. No. 1990-1, compiled at MCL 418.2 of the Michigan Compiled Laws.

Transfer of powers: See MCL 418.315 and 418.991.

Popular name: Act 317

Popular name: Heart and Lung Act

Administrative rules: R 418.10101 et seq. and R 418.10104 et seq. of the Michigan Administrative Code.

418.319 Medical or vocational rehabilitation services.

Sec. 319. (1) An employee who has suffered an injury covered by this act shall be entitled to prompt medical rehabilitation services. When as a result of the injury he or she is unable to perform work for which he or she has previous training or experience, the employee shall be entitled to such vocational rehabilitation services, including retraining and job placement, as may be reasonably necessary to restore him or her to useful employment. If such services are not voluntarily offered and accepted, the director on his or her own motion or upon application of the employee, carrier, or employer, after affording the parties an opportunity to be heard, may refer the employee to a bureau-approved facility for evaluation of the need for, and kind of service, treatment, or training necessary and appropriate to render the employee fit for a remunerative occupation. Upon receipt of such report, the director may order that the training, services, or treatment recommended in the report be provided at the expense of the employer. The director may order that any employee participating in vocational rehabilitation shall receive additional payments for transportation or any extra and necessary expenses during the period and arising out of his or her program of vocational rehabilitation. Vocational rehabilitation training, treatment, or service shall not extend for a period of more

than 52 weeks except in cases when, by special order of the director after review, the period may be extended for an additional 52 weeks or portion thereof. If there is an unjustifiable refusal to accept rehabilitation pursuant to a decision of the director, the director shall order a loss or reduction of compensation in an amount determined by the director for each week of the period of refusal, except for specific compensation payable under section 361(1) and (2).

(2) If a dispute arises between the parties concerning application of any of the provisions of subsection (1), any of the parties may apply for a hearing before a hearing referee or worker's compensation magistrate, as applicable.

History: 1969, Act 317, Eff. Dec. 31, 1969;—Am. 1985, Act 103, Imd. Eff. July 30, 1985.

Compiler's note: For legislative intent as to severability, see Compiler's note to MCL 418.213.

Popular name: Act 317

Popular name: Heart and Lung Act

418.321 Compensation for death resulting from personal injury.

Sec. 321. If death results from the personal injury of an employee, the employer shall pay, or cause to be paid, subject to section 375, in 1 of the methods provided in this section, to the dependents of the employee who were wholly dependent upon the employee's earnings for support at the time of the injury, a weekly payment equal to 80% of the employee's after-tax average weekly wage, subject to the maximum and minimum rates of compensation under this act, for a period of 500 weeks from the date of death. If at the expiration of the 500-week period any such wholly or partially dependent person is less than 21 years of age, a worker's compensation magistrate may order the employer to continue to pay the weekly compensation or some portion thereof until the wholly or partially dependent person reaches the age of 21. If the employee leaves dependents only partially dependent upon his or her earnings for support at the time of injury, the weekly compensation to be paid shall be equal to the same proportion of the weekly payments for the benefit of persons wholly dependent as 80% of the amount contributed by the employee to the partial dependents bears to the annual earnings of the deceased at the time of injury.

History: 1969, Act 317, Eff. Dec. 31, 1969;—Am. 1980, Act 357, Eff. Jan. 1, 1982;—Am. 1985, Act 103, Imd. Eff. July 30, 1985;—Am. 1994, Act 271, Imd. Eff. July 11, 1994.

Compiler's note: For legislative intent as to severability, see Compiler's note to MCL 418.213.

Popular name: Act 317

Popular name: Heart and Lung Act

418.331 Persons conclusively presumed to be wholly dependent for support upon deceased employee.

Sec. 331. The following persons shall be conclusively presumed to be wholly dependent for support upon a deceased employee:

(a) A wife upon a husband with whom she lives at the time of his death, or from whom, at the time of his death, a worker's compensation magistrate shall find the wife was living apart for justifiable cause or because he had deserted her.

(b) A child under the age of 16 years, or over 16 years of age if physically or mentally incapacitated from earning upon the parent with whom he or she is living at the time of the death of that parent. In the event of the death of an employee who has at the time of death a living child by a former spouse or a child who has been deserted by such deceased employee under the age of 16 years, or over if physically or mentally incapacitated from earning, such child shall be conclusively presumed to be wholly dependent for support upon the deceased employee, even though not living with the deceased employee at the time of death and in all cases the death benefit shall be divided between or among the surviving spouse and all the children of the deceased employee, and all other persons, if any, who are wholly dependent upon the deceased employee, in equal shares the surviving spouse taking the same share as a child. In all cases mentioned in this section the total sum due a surviving spouse and his or her own children shall be paid directly to the surviving spouse for his or her own use, and for the use and benefit of his or her own children. If during the time compensation payments shall continue, a worker's compensation magistrate shall find that the surviving spouse is not properly caring for such children, the worker's compensation magistrate shall order the shares of such children to be thereafter paid to their guardian or legal representative for their use and benefit, instead of to their father or mother. In all cases the sums due to the children by the former spouse of the deceased employee shall be paid to their guardians or legal representatives for the use and benefit of such children. In all other cases questions of dependency, in whole or in part, shall be determined in accordance with the fact, as the fact may be at the time of the injury. Where a deceased employee leaves a person wholly dependent upon him or her

for support, such person shall be entitled to the whole death benefit and persons partially dependent, if any, shall receive no part thereof, while the person wholly dependent is living. All persons wholly dependent upon a deceased employee, whether by conclusive presumption or as a matter of fact, shall be entitled to share equally in the death benefit in accordance with the provisions of this section. If there is no one wholly dependent or if the death of all persons wholly dependent shall occur before all compensation is paid, and there is but 1 person partially dependent, such person shall be entitled to compensation according to the extent of his or her dependency; and if there is more than 1 person partially dependent, the death benefit shall be divided among them according to the relative extent of their dependency. A person shall not be considered a dependent unless he or she is a member of the family of the deceased employee, or unless such person bears to the deceased employee the relation of widower or widow, lineal descendant, ancestor, or brother or sister.

History: 1969, Act 317, Eff. Dec. 31, 1969;—Am. 1985, Act 103, Imd. Eff. July 30, 1985;—Am. 1994, Act 271, Imd. Eff. July 11, 1994.

Constitutionality: The Michigan supreme court held violative of the fourteenth amendment the conclusive presumption of dependency for widows set forth in the worker's disability compensation act. Day v W A Foote Memorial Hospital, 412 Mich 698; 316 NW2d 712 (1982).

Compiler's note: For legislative intent as to severability, see Compiler's note to MCL 418.213.

Popular name: Act 317

Popular name: Heart and Lung Act

418.335 Cessation of payments upon remarriage of dependent wife or upon dependent person reaching certain age; reinstatement of dependency; persons to whom section applicable.

Sec. 335. (1) Upon the remarriage of a dependent wife receiving compensation, such payments shall cease upon the payment to her of the balance of the compensation to which she would otherwise have been entitled but not to exceed the sum of \$500.00, and further compensation, if any, shall be payable to the person either wholly or partially dependent upon deceased for support at his death as provided in section 331(b). A worker's compensation magistrate shall determine the amount of compensation or portion thereof that shall be payable weekly to such wholly or partially dependent person for the remaining weeks of compensation. Where, at the expiration of the 500-week period, any such wholly or partially dependent person is less than 18 years of age, a worker's compensation magistrate may order the employer to continue to pay the weekly compensation, or some portion thereof, until such wholly or partially dependent person reaches the age of 18. The payment of compensation to any dependent child shall cease when the child reaches the age of 18 years, if at the age of 18 years he or she is neither physically nor mentally incapacitated from earning, or when the child reaches the age of 16 years and thereafter is self-supporting for 6 months. If the child ceases to be self-supporting thereafter, the dependency shall be reinstated. Such remaining compensation, if any, shall be payable to the person either wholly or partially dependent upon the deceased employee for support at the time of the employee's death, as provided in the case of the remarriage of a dependent wife.

(2) This section shall apply to all persons who are entitled to receive compensation or are receiving compensation under this act on July 30, 1985 and who have not attained the age of 18 years on July 30, 1985.

History: 1969, Act 317, Eff. Dec. 31, 1969;—Am. 1985, Act 103, Imd. Eff. July 30, 1985;—Am. 1994, Act 271, Imd. Eff. July 11, 1994.

Compiler's note: For legislative intent as to severability, see Compiler's note to MCL 418.213.

Popular name: Act 317

Popular name: Heart and Lung Act

418.341 Dependents; qualifications; party in interest.

Sec. 341. Questions as to who constitutes dependents and the extent of their dependency shall be determined as of the date of the injury to the employee, and their right to any death benefit shall become fixed as of such time, irrespective of any subsequent change in conditions except as otherwise specifically provided in sections 321, 331 and 335. The death benefit shall be directly recoverable by and payable to the dependents entitled thereto, or their legal guardians or trustees. In case of the death of a dependent, his proportion of the compensation shall be payable to the surviving dependents pro rata. Upon the death of all dependents compensation shall cease. No person shall be excluded as a dependent who is a nonresident alien. No dependent of an injured employee shall be deemed, during the life of such employee, a party in interest to any proceeding by him for the enforcement of collection of any claim for compensation, nor as respects the compromise thereof by such employee.

History: 1969, Act 317, Eff. Dec. 31, 1969.

Popular name: Act 317

Popular name: Heart and Lung Act

418.345 Death resulting from injury; expense of last sickness, funeral, and burial; payment by employer; limitation; application; order.

Sec. 345. If death results from the injury, the employer shall pay, or cause to be paid, the reasonable expense of the employee's last sickness, funeral, and burial. The cost of the funeral and burial shall not exceed \$6,000.00 or the actual cost, whichever is less. Any person who performed such service or incurred such liability may file an application with the bureau. A worker's compensation magistrate may order the employer to pay such sums.

History: 1969, Act 317, Eff. Dec. 31, 1969;—Am. 1971, Act 187, Imd. Eff. Dec. 20, 1971;—Am. 1985, Act 103, Imd. Eff. July 30, 1985;—Am. 1994, Act 271, Imd. Eff. July 11, 1994;—Am. 1996, Act 107, Imd. Eff. Mar. 5, 1996.

Compiler's note: For legislative intent as to severability, see Compiler's note to MCL 418.213.

Popular name: Act 317

Popular name: Heart and Lung Act

418.351 Total incapacity for work; amount and duration of compensation; limitation on conclusive presumption of total and permanent disability; determining question of permanent and total disability.

Sec. 351. (1) While the incapacity for work resulting from a personal injury is total, the employer shall pay, or cause to be paid as provided in this section, to the injured employee, a weekly compensation of 80% of the employee's after-tax average weekly wage, but not more than the maximum weekly rate of compensation, as determined under section 355. Compensation shall be paid for the duration of the disability. The conclusive presumption of total and permanent disability shall not extend beyond 800 weeks from the date of injury and thereafter the question of permanent and total disability shall be determined in accordance with the fact, as the fact may be at that time.

(2) A totally and permanently disabled employee whose date of injury preceded July 1, 1968, is entitled to the compensation under this act that was payable to the employee immediately before the effective date of this subsection, or compensation equal to 50% of the state average weekly wage as last determined under section 355, whichever is greater.

(3) If an employee who is eligible for weekly benefits under this act would have received greater weekly benefits under the prior benefit standard of 2/3 of average weekly wages, subject to the maximum benefits which were in effect before January 1, 1982, then the employee shall be entitled to such greater weekly benefits, but not at a rate exceeding the maximum rate in his or her dependency classification under such law. This subsection does not authorize payment to an employee according to any schedule of minimum benefits, except those provided in section 356.

History: 1969, Act 317, Eff. Dec. 31, 1969;—Am. 1976, Act 393, Imd. Eff. Jan. 3, 1977;—Am. 1980, Act 357, Eff. Jan. 1, 1982.

Popular name: Act 317

Popular name: Heart and Lung Act

418.352 Supplement to weekly compensation.

Sec. 352. (1) An employee receiving or entitled to receive benefits equal to the maximum payable to that employee under section 351 or the dependent of a deceased employee receiving or entitled to receive benefits under section 321 whose benefits are based on a date of personal injury between September 1, 1965, and December 31, 1979, shall be entitled to a supplement to weekly compensation. The supplement shall be computed using the total annual percentage change in the state average weekly wage, rounded to the nearest 1/10 of 1%, as determined under section 355. The supplement shall be computed as a percentage of the weekly compensation rate that the employee or the dependent of a deceased employee is receiving or is entitled to receive on January 1, 1982 had the employee been receiving benefits at that time, rounded to the nearest dollar. The supplement shall not exceed 5% compounded for each calendar year in the adjustment period. The percentage change for purposes of the adjustment shall be computed from the base year through December 31, 1981. A supplement shall not be paid retroactively for any period of disability before January 1, 1982.

(2) For personal injuries occurring from September 1, 1965, through December 31, 1968, the base year shall be 1968. For personal injuries occurring between January 1, 1969 and December 31, 1979, the base year shall be the year in which the personal injury occurred.

(3) Pursuant to subsection (1), the director shall announce on December 1, 1981, the supplement percentages payable on January 1, 1982.

(4) All personal injuries found compensable under this act after January 1, 1982 with a personal injury date

before January 1, 1980, shall be paid at a rate determined pursuant to this section.

(5) An employee who is eligible to receive differential benefits from the second injury fund shall be paid the supplement pursuant to this section as reduced by the amount of the differential payments being made to the employee by the second injury fund at the time of the payment of the supplement pursuant to this section.

(6) The supplement paid pursuant to this section, when added to the original benefit, shall not exceed the maximum weekly rate of compensation provided in section 355 in effect on the date of the adjustment.

(7) An employee is not entitled to supplements under this section for a personal injury for which the liability has been redeemed.

(8) The supplements under this section shall be paid by an insurer or self-insurer on a weekly basis. The insurer, self-insurer, the second injury fund, and the self-insurers' security fund are entitled to quarterly reimbursement for these payments from the compensation supplement fund in section 391, except that an insurer or self-insurer subject to section 440a of the insurance code of 1956, 1956 PA 218, MCL 500.440a, section 38b of the single business tax act, 1975 PA 228, MCL 208.38b, or section 423 of the Michigan business tax act, 2007 PA 36, MCL 208.1423, shall take a credit under either section 440a of the insurance code of 1956, 1956 PA 218, MCL 500.440a, section 38b of the single business tax act, 1975 PA 228, MCL 208.38b, or section 423 of the Michigan business tax act, 2007 PA 36, MCL 208.1423, as applicable.

(9) This section does not apply to an employee receiving benefits under section 361(1).

(10) An insurer, self-insurer, the second injury fund, or the self-insurers' security fund shall make the supplemental payments required by this section for each quarter of the state's fiscal year that the state treasurer certifies that there are sufficient funds available to meet the obligations of the fund created in section 391 for that quarter. The state treasurer shall certify whether there are sufficient funds in the fund created in section 391 to meet the obligations of that fund for each quarter of the fiscal year of the state on or before the first day of each quarter.

(11) An insurer, self-insurer, the second injury fund, or the self-insurers' security fund shall make the supplemental payments required by this section for the period July 1, 1982 to September 30, 1982 and shall be reimbursed for those payments.

History: Add. 1980, Act 357, Eff. Jan. 1, 1982;—Am. 1982, Act 32, Imd. Eff. Mar. 10, 1982;—Am. 1982, Act 282, Imd. Eff. Oct. 7, 1982;—Am. 1984, Act 46, Imd. Eff. Apr. 9, 1984;—Am. 2007, Act 190, Imd. Eff. Dec. 21, 2007.

Popular name: Act 317

Popular name: Heart and Lung Act

418.353 Determination of dependency.

Sec. 353. (1) For the purposes of sections 351 to 361, dependency shall be determined as follows:

(a) The following shall be conclusively presumed to be dependent for support upon an injured employee:

(i) The wife of an injured employee living with such employee as such wife at the time of the injury.

(ii) A child under the age of 16 years, or over said age, if physically or mentally incapacitated from earning, living with his parent at the time of the injury of such parent.

(b) In all other cases questions of dependency shall be determined in accordance with the fact, as the fact may be at the time of the injury, except as provided in subsection (3). No person shall be considered a dependent unless he is a member of the family of the injured employee, or unless such person bears to such injured employee the relation of husband or wife, or lineal descendent, or ancestor or brother or sister. Except as to those conclusively presumed to be dependents, no person shall be deemed a dependent who receives less than 1/2 of his support from an injured employee.

(2) Weekly payments to an injured employee shall be reduced by the additional amount provided for any dependent child or spouse or other dependent when such child either reaches the age of 18 years or after becoming 16 ceases for a period of 6 months to receive more than 1/2 of his support from such injured employee, if at such time he is neither physically nor mentally incapacitated from earning, or when such spouse shall be divorced by final decree from his injured spouse, or when such child, spouse or other dependent shall be deceased.

(3) An increase in payments shall be made for increased numbers of conclusive dependents as defined in this act not so dependent at the time of the injury of an employee.

History: 1969, Act 317, Eff. Dec. 31, 1969;—Am. 1971, Act 215, Imd. Eff. Dec. 30, 1971.

Constitutionality: The gender-based conclusive presumption of the workers' compensation act is violative of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution; the doctrine of res judicata did not preclude a redetermination of dependency of the wife of an injured worker. *Pike v City of Wyoming*, 431 Mich 589; 433 NW2d 768 (1988).

Popular name: Act 317

Popular name: Heart and Lung Act

418.354 Coordination of benefits.

Sec. 354. (1) This section is applicable when either weekly or lump sum payments are made to an employee as a result of liability pursuant to section 351, 361, or 835 with respect to the same time period for which old-age insurance benefit payments under the social security act, 42 U.S.C. 301 to 1397f; payments under a self-insurance plan, a wage continuation plan, or a disability insurance policy provided by the employer; or pension or retirement payments pursuant to a plan or program established or maintained by the employer, are also received or being received by the employee. Except as otherwise provided in this section, the employer's obligation to pay or cause to be paid weekly benefits other than specific loss benefits under section 361(2) and (3) shall be reduced by these amounts:

(a) Fifty percent of the amount of the old-age insurance benefits received or being received under the social security act.

(b) The after-tax amount of the payments received or being received under a self-insurance plan, a wage continuation plan, or under a disability insurance policy provided by the same employer from whom benefits under section 351, 361, or 835 are received if the employee did not contribute directly to the plan or to the payment of premiums regarding the disability insurance policy. If such self-insurance plans, wage continuation plans, or disability insurance policies are entitled to repayment in the event of a worker's compensation benefit recovery, the carrier shall satisfy such repayment out of funds the carrier has received through the coordination of benefits provided for under this section. Notwithstanding the provisions of this subsection, attorney fees shall be paid pursuant to section 821 to the attorney who secured the worker's compensation recovery.

(c) The proportional amount, based on the ratio of the employer's contributions to the total insurance premiums for the policy period involved, of the after-tax amount of the payments received or being received by the employee pursuant to a disability insurance policy provided by the same employer from whom benefits under section 351, 361, or 835 are received, if the employee did contribute directly to the payment of premiums regarding the disability insurance policy.

(d) The after-tax amount of the pension or retirement payments received or being received pursuant to a plan or program established or maintained by the same employer from whom benefits under section 351, 361, or 835 are received, if the employee did not contribute directly to the pension or retirement plan or program. Subsequent increases in a pension or retirement program shall not affect the coordination of these benefits.

(e) The proportional amount, based on the ratio of the employer's contributions to the total contributions to the plan or program, of the after-tax amount of the pension or retirement payments received or being received by the employee pursuant to a plan or program established or maintained by the same employer from whom benefits under section 351, 361, or 835 are received, if the employee did contribute directly to the pension or retirement plan or program. Subsequent increases in a pension or retirement program shall not affect the coordination of these benefits.

(f) For those employers who do not provide a pension plan, the proportional amount, based on the ratio of the employer's contributions to the total contributions made to a qualified profit sharing plan under section 401(a) of the internal revenue code or any successor to section 401(a) of the internal revenue code covering a profit sharing plan which provides for the payment of benefits only upon retirement, disability, death, or other separation of employment to the extent that benefits are vested under the plan.

(2) To satisfy any remaining obligations under section 351, 361, or 835, the employer shall pay or cause to be paid to the employee the balance due in either weekly or lump sum payments after the application of subsection (1).

(3) In the application of subsection (1) any credit or reduction shall occur pursuant to this section and all of the following:

(a) The bureau shall promulgate rules to provide for notification by an employer or carrier to an employee of possible eligibility for social security benefits and the requirements for establishing proof of application for those benefits. Notification shall be promptly mailed to the employee after the date on which by reason of age the employee may be entitled to social security benefits. A copy of the notification of possible eligibility shall be filed with the bureau by the employer or carrier.

(b) Within 30 days after receipt of the notification of possible employee eligibility the employee shall:

(i) Make application for social security benefits.

(ii) Provide the employer or carrier with proof of that application.

(iii) Provide the employer or carrier with an authority for release of information which shall be utilized by the employer or carrier to obtain necessary benefit entitlement and amount information from the social security administration. The authority for release of information shall be effective for 1 year.

(4) Failure of the employee to provide the proof of application or the authority for release of information as

prescribed in subsection (3) shall allow the employer or carrier with the approval of the bureau to discontinue the compensation benefits payable to the employee under section 351, 361, or 835 until the proof of application and the authority for release of information is provided. Compensation benefits withheld shall be reimbursed to the employee upon the providing of the required proof of application, or the authority for release of information, or both.

(5) If the employer or carrier is required to submit a new authority for release of information to the social security administration in order to receive information necessary to comply with this section, the employee shall provide the new authority for release of information within 30 days of a request by the employer or carrier. Failure to provide the new authority for release of information shall allow the employer or carrier with the approval of the bureau to discontinue benefits until the authority for release of information is provided as prescribed in this subsection. Compensation benefits withheld shall be reimbursed to the employee upon the providing of the new authority for release of information.

(6) Within 30 days after either the date of first payment of compensation benefits under section 351, 361, or 835, or 30 days after the date of application for any benefit under subsection (1)(b), (c), (d), or (e), whichever is later, the employee shall provide the employer or carrier with a properly executed authority for release of information which shall be utilized by the employer or carrier to obtain necessary benefit entitlement and amount information from the appropriate source. The authority for release of information is effective for 1 year. Failure of the employee to provide a properly executed authority for release of information shall allow the employer or carrier with the approval of the bureau to discontinue the compensation benefits payable under section 351, 361, or 835 to the employee until the authority for release of information is provided. Compensation benefits withheld shall be reimbursed to the employee upon providing the required authority for release of information. If the employer or carrier is required to submit a new authority for release of information to the appropriate source in order to receive information necessary to comply with this section, the employee shall provide a properly executed new authority for release of information within 30 days after a request by the employer or carrier. Failure of the employee to provide a properly executed new authority for release of information shall allow the employer or carrier with the approval of the bureau to discontinue benefits under section 351, 361, or 835 until the authority for release of information is provided as prescribed in this subsection. Compensation benefits withheld shall be reimbursed to the employee upon the providing of the new authority for release of information.

(7) A credit or reduction under this section shall not occur because of an increase granted by the social security administration as a cost of living adjustment.

(8) Except as provided in subsections (4), (5), and (6), a credit or reduction of benefits otherwise payable for any week shall not be taken under this section until there has been a determination of the benefit amount otherwise payable to the employee under section 351, 361, or 835 and the employee has begun receiving the benefit payments.

(9) Except as otherwise provided in this section, any benefit payments under the social security act, or any fund, policy, or program as specified in subsection (1) which the employee has received or is receiving after March 31, 1982 and during a period in which the employee was receiving unreduced compensation benefits under section 351, 361, or 835 shall be considered to have created an overpayment of compensation benefits for that period. The employer or carrier shall calculate the amount of the overpayment and send a notice of overpayment and a request for reimbursement to the employee. Failure by the employee to reimburse the employer or carrier within 30 days after the mailing date of the notice of request for reimbursement shall allow the employer or carrier with the approval of the bureau to discontinue 50% of future weekly compensation payments under section 351, 361 or 835. The compensation payments withheld shall be credited against the amount of the overpayment. Payment of the appropriate compensation benefit shall resume when the total amount of the overpayment has been withheld.

(10) The employer or carrier taking a credit or making a reduction as provided in this section shall immediately report to the bureau the amount of any credit or reduction, and as requested by the bureau, furnish to the bureau satisfactory proof of the basis for a credit or reduction.

(11) Disability insurance benefit payments under the social security act shall be considered to be payments from funds provided by the employer and to be primary payments on the employer's obligation under section 351, 361, or 835 as old-age benefit payments under the social security act are considered pursuant to this section. The coordination of social security disability benefits shall commence on the date of the award certificate of the social security disability benefits. Any accrued social security disability benefits shall not be coordinated. However, social security disability insurance benefits shall only be so considered if section 224 of the social security act, 42 U.S.C. 424a, is revised so that a reduction of social security disability insurance benefits is not made because of the receipt of worker's compensation benefits by the employee.

(12) Nothing in this section shall be considered to compel an employee to apply for early federal social

security old-age insurance benefits or to apply for early or reduced pension or retirement benefits.

(13) As used in this section, "after-tax amount" means the gross amount of any benefit under subsection (1)(b), (1)(c), (1)(d), or (1)(e) reduced by the prorated weekly amount which would have been paid, if any, under the federal insurance contributions act, 26 U.S.C. 3101 to 3126, state income tax and federal income tax, calculated on an annual basis using as the number of exemptions the disabled employee's dependents plus the employee, and without excess itemized deductions. In determining the "after-tax amount" the tables provided for in section 313(2) shall be used. The gross amount of any benefit under subsection (1)(b), (1)(c), (1)(d), or (1)(e) shall be presumed to be the same as the average weekly wage for purposes of the table. The applicable 80% of after-tax amount as provided in the table will be multiplied by 1.25 which will be conclusive for determining the "after-tax amount" of benefits under subsection (1)(b), (1)(c), (1)(d), or (1)(e).

(14) This section does not apply to any payments received or to be received under a disability pension plan provided by the same employer which plan is in existence on March 31, 1982. Any disability pension plan entered into or renewed after March 31, 1982 may provide that the payments under that disability pension plan provided by the employer shall not be coordinated pursuant to this section.

(15) With respect to volunteer fire fighters, volunteer safety patrol officers, volunteer civil defense workers, and volunteer ambulance drivers and attendants who are considered employees for purposes of this act pursuant to section 161(1)(a), the reduction of weekly benefits provided for disability insurance payments under subsection (1)(b) and (c) and subsection (11) may be waived by the employer. An employer that is not a self-insurer may make the waiver provided for under this subsection only at the time a worker's compensation insurance policy is entered into or renewed.

(16) This section shall not apply to payments made to an employee as a result of liability pursuant to section 361(2) and (3) for the specific loss period set forth therein. It is the intent of the legislature that, because benefits under section 361(2) and (3) are benefits which recognize human factors substantially in addition to the wage loss concept, coordination of benefits should not apply to such benefits.

(17) The decision of the Michigan Supreme Court in Franks v White Pine Copper Division, 422 Mich 636 (1985) is declared to have been erroneously rendered insofar as it interprets this section, it having been and being the legislative intention not to coordinate payments under this section resulting from liability pursuant to section 351, 361, or 835 for personal injuries occurring before March 31, 1982. It is the purpose of this amendatory act to so affirm. This remedial and curative amendment shall be liberally construed to effectuate this purpose.

(18) This section applies only to payments resulting from liability pursuant to section 351, 361, or 835 for personal injuries occurring on or after March 31, 1982. Any payments made to an employee resulting from liability pursuant to section 351, 361, or 835 for a personal injury occurring before March 31, 1982 that have not been coordinated under this section as of the effective date of this subsection shall not be coordinated, shall not be considered to have created an overpayment of compensation benefits, and shall not be subject to reimbursement to the employer or carrier.

(19) Notwithstanding any other section of this act, any payments made to an employee resulting from liability pursuant to section 351, 361, or 835 for a personal injury occurring before March 31, 1982 that have been coordinated before the effective date of this subsection shall be considered to be an underpayment of compensation benefits, and the amounts withheld pursuant to coordination shall be reimbursed with interest, within 60 days of the effective date of this subsection, to the employee by the employer or carrier.

(20) Notwithstanding any other section of this act, any employee who has paid an employer or carrier money alleged by the employer or carrier to be owed the employer or carrier because that employee's benefits had not been coordinated under this section and whose date of personal injury was before March 31, 1982 shall be reimbursed with interest, within 60 days of the effective date of this subsection, that money by the employer or carrier.

(21) If any portion of this section is subsequently found to be unconstitutional or in violation of applicable law, it shall not affect the validity of the remainder of this section.

History: Add. 1981, Act 203, Eff. Mar. 31, 1982;—Am. 1983, Act 159, Imd. Eff. July 24, 1983;—Am. 1985, Act 103, Imd. Eff. July 30, 1985;—Am. 1987, Act 28, Imd. Eff. May 14, 1987.

Constitutionality: The amendment of the workers' compensation act by 1987 PA 28, MCL 418.354(17)-(20), which prohibits the coordination of workers' compensation benefits for employees who were injured before the effective date of 1981 PA 203, MCL 418.354, does not violate the Due Process Clauses of the federal and state constitutions, the Contract Clause of the federal constitution, or the Separation of Powers Clause of the Michigan Constitution; the amendment was a constitutional exercise of legislative power retroactively modifying benefit levels for a legitimate purpose furthered by rational means; the statute does not abrogate any vested rights of the employees and validly may be applied to all compensation liabilities within its terms except those reduced to a final judgment before its effective date. Romein v General Motors, 436 Mich 515; 462 NW2d 555 (1990).

The U.S. Supreme Court, affirming the 1990 Michigan Supreme Court decision, held that the statute: (1) did not substantially impair the obligations of petitioners' contracts with their employees in violation of the Contract Clause because there was no contractual

agreement regarding the specific terms allegedly at issue, and (2) did not violate the Due Process Clause since its retroactive provision was a rational means of furthering a legitimate legislative purpose. Romein v General Motors, 503 US 181; 112 S Ct 1105; 117 L Ed2d 328 (1992).

Compiler's note: For legislative intent as to severability, see Compiler's note to MCL 418.213.

Popular name: Act 317

Popular name: Heart and Lung Act

418.355 Adjustment of maximum weekly rate; computing supplemental benefit.

Sec. 355. (1) The maximum weekly rate shall be adjusted once each year in accordance with the increase or decrease in the average weekly wage in covered employment, as determined by the Michigan employment security commission.

(2) Effective January 1, 1982, and each January 1 thereafter, the maximum weekly rate of compensation for injuries occurring within that year shall be established as 90% of the state average weekly wage as of the prior June 30, adjusted to the next higher multiple of \$1.00.

(3) For the purpose of computing the supplemental benefit under section 352, the state average weekly wage for any injury year shall be the average weekly wage in covered employment determined by the Michigan employment security commission for the 12 months ending June 30 of the preceding year.

History: 1969, Act 317, Eff. Dec. 31, 1969;—Am. 1980, Act 357, Eff. Jan. 1, 1982;—Am. 1982, Act 32, Imd. Eff. Mar. 10, 1982.

Popular name: Act 317

Popular name: Heart and Lung Act

418.356 Increase in benefits after 2 years of continuous disability; petition for hearing; evidence; order for adjustment of compensation; payment; reimbursement from second injury fund; minimum weekly benefit for death; minimum weekly benefit for 1 or more losses; no minimum weekly benefit for total disability; exception.

Sec. 356. (1) An injured employee who, at the time of the personal injury, is entitled to a rate of compensation less than 50% of the then applicable state average weekly wage as determined for the year in which the injury occurred pursuant to section 355, may be entitled to an increase in benefits after 2 years of continuous disability. After 2 years of continuous disability, the employee may petition for a hearing at which the employee may present evidence, that by virtue of the employee's age, education, training, experience, or other documented evidence which would fairly reflect the employee's earning capacity, the employee's earnings would have been expected to increase. Upon presentation of this evidence, a worker's compensation magistrate may order an adjustment of the compensation rate up to 50% of the state average weekly wage for the year in which the employee's injury occurred. The adjustment of compensation, if ordered, shall be effective as of the date of the employee's petition for the hearing. The adjustments provided in this subsection shall be paid by the carrier on a weekly basis. However, the carrier and the self-insurers' security fund shall be entitled to reimbursement for these payments from the second injury fund created in section 501. There shall be only 1 adjustment made for an employee under this subsection.

(2) The minimum weekly benefit for death under section 321 shall be 50% of the state average weekly wage as determined under section 355.

(3) The minimum weekly benefit for 1 or more losses stated in section 361(2) and (3) shall be 25% of the state average weekly wage as determined under section 355.

(4) There is no minimum weekly benefit for total disability under section 351.

(5) This section does not apply to an employee entitled to benefits under section 361(1).

History: Add. 1980, Act 357, Eff. Jan. 1, 1982;—Am. 1982, Act 32, Imd. Eff. Mar. 10, 1982;—Am. 1985, Act 103, Imd. Eff. July 30, 1985;—Am. 1994, Act 271, Imd. Eff. July 11, 1994.

Compiler's note: For legislative intent as to severability, see Compiler's note to MCL 418.213.

Popular name: Act 317

Popular name: Heart and Lung Act

418.357 Employee 65 or older; reduction of weekly payments; exception.

Sec. 357. (1) When an employee who is receiving weekly payments or is entitled to weekly payments reaches or has reached or passed the age of 65, the weekly payments for each year following his or her sixty-fifth birthday shall be reduced by 5% of the weekly payment paid or payable at age 65, but not to less than 50% of the weekly benefit paid or payable at age 65, so that on his or her seventy-fifth birthday the weekly payments shall have been reduced by 50%; after which there shall not be a further reduction for the duration of the employee's life. Weekly payments shall not be reduced below the minimum weekly benefit as provided in this act.

(2) Subsection (1) shall not apply to a person 65 years of age or over otherwise eligible and receiving weekly payments who is not eligible for benefits under the social security act, 42 U.S.C. 301 to 1397f, or to a person whose payments under this act are coordinated under section 354.

History: 1969, Act 317, Eff. Dec. 31, 1969;—Am. 1974, Act 184, Imd. Eff. July 2, 1974;—Am. 1982, Act 32, Imd. Eff. Mar. 10, 1982.

Constitutionality: This section is not unconstitutional as a denial of equal protection of the law. Cruz v Chevrolet Grey Iron Division of General Motors Corporation, 398 Mich 117; 247 NW2d 764 (1976).

Popular name: Act 317

Popular name: Heart and Lung Act

418.358 Reduction of benefits.

Sec. 358. Net weekly benefits payable under section 351, 361, or lump sum benefits under section 835, shall be reduced by 100% of the amount of benefits paid or payable to the injured employee under the Michigan employment security act, Act No. 1 of the Public Acts of the Extra Session of 1936, as amended, being sections 421.1 to 421.67a of the Michigan Compiled Laws, for identical periods of time and chargeable to the same employer.

History: Add. 1980, Act 357, Eff. Jan. 1, 1982.

Popular name: Act 317

Popular name: Heart and Lung Act

418.359 Repealed. 1985, Act 103, Imd. Eff. July 10, 1985.

Compiler's note: The repealed section pertained to payments for total disability of employees under 25.

Popular name: Act 317

Popular name: Heart and Lung Act

418.360 Professional athlete; weekly benefits; condition; benefits under other provisions.

Sec. 360. (1) A person who suffers an injury arising out of and in the course of employment as a professional athlete shall be entitled to weekly benefits only when the person's average weekly wages in all employments at the time of application for benefits, and thereafter, as computed in accordance with section 371, are less than 200% of the state average weekly wage.

(2) This section shall not be construed to prohibit an otherwise eligible person from receiving benefits under section 315, 319, or 361.

History: Add. 1978, Act 373, Imd. Eff. July 27, 1978.

Popular name: Act 317

Popular name: Heart and Lung Act

418.361 Partial incapacity for work; amount and duration of compensation; effect of imprisonment or commission of crime; scheduled disabilities; meaning of total and permanent disability; limitations; payment for loss of second member.

Sec. 361. (1) While the incapacity for work resulting from a personal injury is partial, the employer shall pay, or cause to be paid to the injured employee weekly compensation equal to 80% of the difference between the injured employee's after-tax average weekly wage before the personal injury and the after-tax average weekly wage which the injured employee is able to earn after the personal injury, but not more than the maximum weekly rate of compensation, as determined under section 355. Compensation shall be paid for the duration of the disability. However, an employer shall not be liable for compensation under section 351, 371(1), or this subsection for such periods of time that the employee is unable to obtain or perform work because of imprisonment or commission of a crime.

(2) In cases included in the following schedule, the disability in each case shall be considered to continue for the period specified, and the compensation paid for the personal injury shall be 80% of the after-tax average weekly wage subject to the maximum and minimum rates of compensation under this act for the loss of the following:

- (a) Thumb, 65 weeks.
- (b) First finger, 38 weeks.
- (c) Second finger, 33 weeks.
- (d) Third finger, 22 weeks.
- (e) Fourth finger, 16 weeks.

The loss of the first phalange of the thumb, or of any finger, shall be considered to be equal to the loss of 1/2 of that thumb or finger, and compensation shall be 1/2 of the amount above specified.

The loss of more than 1 phalange shall be considered as the loss of the entire finger or thumb. The amount received for more than 1 finger shall not exceed the amount provided in this schedule for the loss of a hand.

(f) Great toe, 33 weeks.

(g) A toe other than the great toe, 11 weeks.

The loss of the first phalange of any toe shall be considered to be equal to the loss of 1/2 of that toe, and compensation shall be 1/2 of the amount above specified.

The loss of more than 1 phalange shall be considered as the loss of the entire toe.

(h) Hand, 215 weeks.

(i) Arm, 269 weeks.

An amputation between the elbow and wrist that is 6 or more inches below the elbow shall be considered a hand, and an amputation above that point shall be considered an arm.

(j) Foot, 162 weeks.

(k) Leg, 215 weeks.

An amputation between the knee and foot 7 or more inches below the tibial table (plateau) shall be considered a foot, and an amputation above that point shall be considered a leg.

(l) Eye, 162 weeks.

Eighty percent loss of vision of 1 eye shall constitute the total loss of that eye.

(3) Total and permanent disability, compensation for which is provided in section 351 means:

(a) Total and permanent loss of sight of both eyes.

(b) Loss of both legs or both feet at or above the ankle.

(c) Loss of both arms or both hands at or above the wrist.

(d) Loss of any 2 of the members or faculties in subdivisions (a), (b), or (c).

(e) Permanent and complete paralysis of both legs or both arms or of 1 leg and 1 arm.

(f) Incurable insanity or imbecility.

(g) Permanent and total loss of industrial use of both legs or both hands or both arms or 1 leg and 1 arm; for the purpose of this subdivision such permanency shall be determined not less than 30 days before the expiration of 500 weeks from the date of injury.

(4) The amounts specified in this clause are all subject to the same limitations as to maximum and minimum as above stated. In case of the loss of 1 member while compensation is being paid for the loss of another member, compensation shall be paid for the loss of the second member for the period provided in this section. Payments for the loss of a second member shall begin at the conclusion of the payments for the first member.

History: 1969, Act 317, Eff. Dec. 31, 1969;—Am. 1980, Act 357, Eff. Jan. 1, 1982;—Am. 1985, Act 103, Imd. Eff. July 30, 1985.

Constitutionality: The statutory limitation in subsection (2)(g) of this section is not unconstitutional. Johnson v Harnischfeger Corp., 414 Mich 102; 323 NW2d 912 (1982).

Compiler's note: For legislative intent as to severability, see Compiler's note to MCL 418.213.

Popular name: Act 317

Popular name: Heart and Lung Act

418.364 Bi-annual study required; report and recommendations.

Sec. 364. A bi-annual study shall be conducted by the director of the adequacy of weekly benefits paid under this act. The study shall evaluate the effects of inflation on benefits and other factors which the director considers relevant. The director shall report the results of the study and make appropriate recommendations to the legislature by March 1, 1983. By March 1 of each following odd numbered year, the director shall repeat this process.

History: Add. 1981, Act 203, Eff. Mar. 31, 1982.

Popular name: Act 317

Popular name: Heart and Lung Act

418.371 Weekly loss in wages; average weekly wage.

Sec. 371. (1) The weekly loss in wages referred to in this act shall consist of the percentage of the average weekly earnings of the injured employee computed according to this section as fairly represents the proportionate extent of the impairment of the employee's earning capacity in the employments covered by this act in which the employee was working at the time of the personal injury. The weekly loss in wages shall be fixed as of the time of the personal injury, and determined considering the nature and extent of the personal injury. The compensation payable, when added to the employee's wage earning capacity after the personal injury in the same or other employments, shall not exceed the employee's average weekly earnings at the time of the injury.

(2) As used in this act, "average weekly wage" means the weekly wage earned by the employee at the time of the employee's injury in all employment, inclusive of overtime, premium pay, and cost of living adjustment, and exclusive of any fringe or other benefits which continue during the disability. Any fringe or other benefit which does not continue during the disability shall be included for purposes of determining an employee's average weekly wage to the extent that the inclusion of the fringe or other benefit will not result in a weekly benefit amount which is greater than 2/3 of the state average weekly wage at the time of injury. The average weekly wage shall be determined by computing the total wages paid in the highest paid 39 weeks of the 52 weeks immediately preceding the date of injury, and dividing by 39.

(3) If the employee worked less than 39 weeks in the employment in which the employee was injured, the average weekly wage shall be based upon the total wages earned by the employee divided by the total number of weeks actually worked. For purposes of this subsection, only those weeks in which work is performed shall be considered in computing the total wages earned and the number of weeks actually worked.

(4) If an employee sustains a compensable injury before completing his or her first work week, the average weekly wage shall be calculated by determining the number of hours of work per week contracted for by that employee multiplied by the employee's hourly rate, or the weekly salary contracted for by the employee.

(5) If the hourly earning of the employee cannot be ascertained, or if the pay has not been designated for the work required, the wage, for the purpose of calculating compensation, shall be taken to be the usual wage for similar services if the services are rendered by paid employees.

(6) If there are special circumstances under which the average weekly wage cannot justly be determined by applying subsections (2) to (5), an average weekly wage may be computed by dividing the aggregate earnings during the year before the injury by the number of days when work was performed and multiplying that daily wage by the number of working days customary in the employment, but not less than 5.

(7) The average weekly wage as determined under this section shall be rounded to the nearest dollar.

History: 1969, Act 317, Eff. Dec. 31, 1969;—Am. 1980, Act 357, Eff. Jan. 1, 1982;—Am. 1981, Act 192, Eff. Mar. 31, 1982;—Am. 1982, Act 32, Imd. Eff. Mar. 10, 1982.

Popular name: Act 317

Popular name: Heart and Lung Act

418.372 Employee engaged in more than 1 employment at time of personal injury or personal injury resulting in death; liability; apportionment of weekly benefits; exception.

Sec. 372. (1) If an employee was engaged in more than 1 employment at the time of a personal injury or a personal injury resulting in death, the employer in whose employment the injury or injury resulting in death occurred is liable for all the injured employee's medical, rehabilitation, and burial benefits. Weekly benefits shall be apportioned as follows:

(a) If the employment which caused the personal injury or death provided more than 80% of the injured employee's average weekly wages at the time of the personal injury or death, the insurer or self-insurer is liable for all of the weekly benefits.

(b) If the employment which caused the personal injury or death provided 80% or less of the employee's average weekly wage at the time of the personal injury or death, the insurer or self-insurer is liable for that portion of the employee's weekly benefits as bears the same ratio to his or her total weekly benefits as the average weekly wage from the employment which caused the personal injury or death bears to his or her total weekly wages. The second injury fund is separately but dependently liable for the remainder of the weekly benefits. The insurer or self-insurer has the obligation to pay the employee or the employee's dependents at the full rate of compensation. The second injury fund shall reimburse the insurer or self-insurer quarterly for the second injury fund's portion of the benefits due the employee or the employee's dependents.

(2) For purposes of apportionment under this section, only wages which were reported to the internal revenue service shall be considered, and the reports of wages to the internal revenue service are conclusive for the purpose of apportionment under this section.

(3) This section does not apply to volunteer public employees entitled to benefits under section 161(1)(a).

History: Add. 1980, Act 357, Eff. Jan. 1, 1982.

Popular name: Act 317

Popular name: Heart and Lung Act

418.373 Employee receiving nondisability pension or retirement benefits, including old-age benefits; presumption; other standards of disability superseded; medical benefits under MCL 418.315 not barred.

Sec. 373. (1) An employee who terminates active employment and is receiving nondisability pension or

retirement benefits under either a private or governmental pension or retirement program, including old-age benefits under the social security act, 42 U.S.C. 301 to 1397f, that was paid by or on behalf of an employer from whom weekly benefits under this act are sought shall be presumed not to have a loss of earnings or earning capacity as the result of a compensable injury or disease under either this chapter or chapter 4. This presumption may be rebutted only by a preponderance of the evidence that the employee is unable, because of a work related disability, to perform work suitable to the employee's qualifications, including training or experience. This standard of disability supersedes other applicable standards used to determine disability under either this chapter or chapter 4.

(2) This section shall not be construed as a bar to an employee receiving medical benefits under section 315 upon the establishment of a causal relationship between the employee's work and the need for medical treatment.

History: Add. 1980, Act 357, Eff. Jan. 1, 1982.

Popular name: Act 317

Popular name: Heart and Lung Act

418.375 Death of injured employee; death benefits in lieu of further disability indemnity.

Sec. 375. (1) The death of the injured employee before the expiration of the period within which he or she would receive weekly payments shall be considered to end the disability and all liability for the remainder of such payments which he or she would have received in case he or she had lived shall be terminated, but the employer shall thereupon be liable for the following death benefits in lieu of any further disability indemnity.

(2) If the injury received by such employee was the proximate cause of his or her death, and the deceased employee leaves dependents, as hereinbefore specified, wholly or partially dependent on him or her for support, the death benefit shall be a sum sufficient, when added to the indemnity which at the time of death has been paid or becomes payable under the provisions of this act to the deceased employee, to make the total compensation for the injury and death exclusive of medical, surgical, hospital services, medicines, and rehabilitation services, and expenses furnished as provided in sections 315 and 319, equal to the full amount which such dependents would have been entitled to receive under the provisions of section 321, in case the injury had resulted in immediate death. Such benefits shall be payable in the same manner as they would be payable under the provisions of section 321 had the injury resulted in immediate death.

(3) If an application for benefits has been filed but has not been decided by a worker's compensation magistrate, or on appeal and the claimant dies from a cause unrelated to his or her injury, the proceedings shall not abate but may be continued in the name of his or her personal representative. In such case, the benefits payable up to time of death shall be paid to the same beneficiaries and in the same amounts as would have been payable if the employee had suffered a compensable injury resulting in death.

History: 1969, Act 317, Eff. Dec. 31, 1969;—Am. 1985, Act 103, Imd. Eff. July 30, 1985;—Am. 1994, Act 271, Imd. Eff. July 11, 1994.

Compiler's note: For legislative intent as to severability, see Compiler's note to MCL 418.213.

Popular name: Act 317

Popular name: Heart and Lung Act

418.381 Claim for compensation; time limit; extension of time period; payment for nursing or attendant care; compliance.

Sec. 381. (1) A proceeding for compensation for an injury under this act shall not be maintained unless a claim for compensation for the injury, which claim may be either oral or in writing, has been made to the employer or a written claim has been made to the bureau on forms prescribed by the director, within 2 years after the occurrence of the injury. In case of the death of the employee, the claim shall be made within 2 years after death. The employee shall provide a notice of injury to the employer within 90 days after the happening of the injury, or within 90 days after the employee knew, or should have known, of the injury. Failure to give such notice to the employer shall be excused unless the employer can prove that he or she was prejudiced by the failure to provide such notice. In the event of physical or mental incapacity of the employee, the notice and claim shall be made within 2 years from the time the injured employee is not physically or mentally incapacitated from making the claim. A claim shall not be valid or effectual for any purpose under this chapter unless made within 2 years after the later of the date of injury, the date disability manifests itself, or the last day of employment with the employer against whom claim is being made. If an employee claims benefits for a work injury and is thereafter compensated for the disability by worker's compensation or benefits other than worker's compensation, or is provided favored work by the employer because of the disability, the period of time within which a claim shall be made for benefits under this act shall be extended by the time during which the benefits are paid or the favored work is provided.

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(2) Except as provided in subsection (3), if any compensation is sought under this act, payment shall not be made for any period of time earlier than 2 years immediately preceding the date on which the employee filed an application for a hearing with the bureau.

(3) Payment for nursing or attendant care shall not be made for any period which is more than 1 year before the date an application for a hearing is filed with the bureau.

(4) The receipt by an employee of any other occupational or nonoccupational benefit does not suspend the duty of the employee to comply with this section, except under the circumstances described in subsection (1).

History: 1969, Act 317, Eff. Dec. 31, 1969;—Am. 1980, Act 357, Eff. Jan. 1, 1982;—Am. 1981, Act 197, Eff. Jan. 1, 1982;—Am. 1982, Act 32, Imd. Eff. Mar. 10, 1982;—Am. 1985, Act 103, Imd. Eff. July 30, 1985.

Compiler's note: For legislative intent as to severability, see Compiler's note to MCL 418.213.

Popular name: Act 317

Popular name: Heart and Lung Act

418.383 Notice of injury; unintentional errors; actual knowledge.

Sec. 383. A notice of injury or a claim for compensation made under the provisions of this act shall not be held invalid or insufficient by reason of any inaccuracy in stating the time, place or cause of the injury, unless it is shown that it was the intention to mislead, and the employer or the carrier, was in fact misled. Want of written notice shall not be a bar to proceedings under this act if it be shown that the employer had notice or knowledge of the injury.

History: 1969, Act 317, Eff. Dec. 31, 1969.

Popular name: Act 317

Popular name: Heart and Lung Act

418.385 Physical examination of employee; payment; report; copy; evidence; failure of party to provide medical report.

Sec. 385. After the employee has given notice of injury and from time to time thereafter during the continuance of his or her disability, if so requested by the employer or the carrier, he or she shall submit himself or herself to an examination by a physician or surgeon authorized to practice medicine under the laws of the state, furnished and paid for by the employer or the carrier. If an examination relative to the injury is made, the employee or his or her attorney shall be furnished, within 15 days of a request, a complete and correct copy of the report of every such physical examination relative to the injury performed by the physician making the examination on behalf of the employer or the carrier. The employee shall have the right to have a physician provided and paid for by himself or herself present at the examination. If he or she refuses to submit himself or herself for the examination, or in any way obstructs the same, his or her right to compensation shall be suspended and his or her compensation during the period of suspension may be forfeited. Any physician who makes or is present at any such examination may be required to testify under oath as to the results thereof. If the employee has had other physical examinations relative to the injury but not at the request of the employer or the carrier, he or she shall furnish to the employer or the carrier a complete and correct copy of the report of each such physical examination, if so requested, within 15 days of the request. If a party fails to provide a medical report regarding an examination or medical treatment, that party shall be precluded from taking the medical testimony of that physician only. The opposing party may, however, elect to take the deposition of that physician.

History: 1969, Act 317, Eff. Dec. 31, 1969;—Am. 1985, Act 103, Imd. Eff. July 30, 1985.

Compiler's note: For legislative intent as to severability, see Compiler's note to MCL 418.213.

Popular name: Act 317

Popular name: Heart and Lung Act

418.391 Compensation supplement fund; creation; administration; appropriation; rules; payments; personnel; recommendations; carrying forward unexpended funds; reduction of appropriation; report; reimbursement of insurers, self-insurers, second injury fund, and self-insurers' security fund; certification; application.

Sec. 391. (1) The compensation supplement fund is created as a separate fund in the state treasury. The fund shall be administered by the state treasurer pursuant to this section. The legislature shall appropriate to the compensation supplement fund from the general fund the amounts necessary to meet the obligations of the compensation supplement fund under section 352, and the administrative costs incurred by the bureau under this section.

(2) The director shall promulgate rules under the administrative procedures act of 1969, 1969 PA 306,

MCL 24.201 to 24.328, that prescribe the conditions under which the money in the compensation supplement fund shall be expended pursuant to section 352 and this section.

(3) The department of treasury shall cause to be paid from the compensation supplement fund those amounts and at those times as are prescribed by the director pursuant to subsection (2).

(4) The director may employ the personnel the director considers necessary for the proper administration of the compensation supplement fund.

(5) The director shall annually recommend to the governor and the chairpersons of the senate and house appropriations committees the amount of money the director considers necessary to implement and enforce this section and section 352 during the ensuing fiscal year. The compensation supplement fund may carry forward into a subsequent fiscal year any unexpended funds, and reduce the necessary appropriation by the amount of the unobligated balance in the fund.

(6) Not later than April 1 of each year the director shall submit a report to the governor and the legislature summarizing the transactions of the compensation supplement fund during the preceding calendar year. The report shall identify each insurer and self-insurer that receives a reimbursement payment from the compensation supplement fund and the amount of reimbursement. When all liabilities of the compensation supplement fund for reimbursements required pursuant to section 352 are paid, the director shall recommend to the governor and the legislature that the compensation supplement fund be abolished. The director shall certify to the department of treasury and the commissioner of insurance the identity of each insurer and self-insurer that claims a credit as provided for under section 352(8) and the amount of each supplemental payment under section 352 paid by that insurer or self-insurer to which the credit applies.

(7) Pursuant to section 352, insurers and self-insurers not subject to either section 440a of the insurance code of 1956, 1956 PA 218, MCL 500.440a, section 38b of the single business tax act, 1975 PA 228, MCL 208.38b, or section 423 of the Michigan business tax act, 2007 PA 36, MCL 208.1423, the second injury fund, and the self-insurers' security fund are entitled to reimbursement from the compensation supplement fund. An application for reimbursement shall be on the forms and contain information as required by the director. Application for a claim for reimbursement from the compensation supplement fund shall be filed with the director within 3 months after the date on which the right to reimbursement first accrues. After the insurer, self-insurer, the second injury fund, or the self-insurers' security fund has established a right to reimbursement, payment from the compensation supplement fund shall be made without interest on a proper showing every quarter. A reimbursement shall not be allowed for a period that is more than 1 year before the date of the filing of the application for reimbursement pursuant to this section. A reimbursement shall not be allowed for payments made under section 352 for which an insurer or self-insurer takes a credit as provided for in section 352(8).

History: Add. 1980, Act 357, Eff. Jan. 1, 1981;—Am. 1982, Act 32, Imd. Eff. Mar. 10, 1982;—Am. 1984, Act 46, Imd. Eff. Apr. 9, 1984;—Am. 2007, Act 190, Imd. Eff. Dec. 21, 2007.

Popular name: Act 317

Popular name: Heart and Lung Act